

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

COMMITMENT TO EXCELLENCE, INC.

PLAINTIFF

v.

CIVIL ACTION NO. 4:23cv160-DMB-DAS

**KAPPA MU MU CHAPTER OF OMEGA PSI
PHI FRATERNITY, INC.**

DEFENDANT

VERIFIED COMPLAINT

Plaintiff Commitment to Excellence, Inc. (“CTE”) hereby files its Complaint against Defendant Kappa Mu Mu Chapter of Omega Psi Phi Fraternity, Inc. (“Kappa Mu Mu”) as follows:

Nature of the Action

1. This action arises out of Kappa Mu Mu’s violation of, and infringement on, CTE’s trademark rights in the event name “Sundresses and Seersuckers®” by branding an event to take place on August 19, 2023 as “Seersucker and Sundresses with Flaming Cigars.” Despite having been advised of CTE’s trademark rights and the fact that Kappa Mu Mu’s proposed event name violates them, Kappa Mu Mu has refused to re-name its upcoming event and continues to market it under the name “Seersucker and Sundresses with Flaming Cigars.” Kappa Mu Mu’s actions are a violation of federal trademark law, infringe on CTE’s trademark and other rights, and will result in immediate and irreparable injury, loss, and/or damage to CTE. Accordingly, CTE files this Verified Complaint seeking a temporary restraining order and preliminary injunction, a permanent injunction, and damages.

Jurisdictional Allegations

2. CTE is a non-profit corporation organized and existing under the laws of the State of Georgia with its principal office in Atlanta, Georgia.

3. On information and belief, Defendant Kappa Mu Mu is a chapter of Omega Psi Phi Fraternity, Inc. chartered on March 27, 2009 in Greenville, Mississippi. On information and belief, Robert Dogan and Bennie Richard are officers, directors, representatives, and/or agents of Kappa Mu Mu.

4. This is an action for trademark¹ infringement and false designation of origin under the Trademark Act of 1946, 15 U.S.C. §§ 1051, et seq. (the “Lanham Act”).

5. The Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) and (b); and 15 U.S.C. §§ 1116 and 1121.

6. This Court has personal jurisdiction over Kappa Mu Mu because, on information and belief, it is domiciled in the State of Mississippi.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Kappa Mu Mu is a resident of this District and the event Kappa Mu Mu proposes to host on August 19, 2023 that forms the basis of this action will take place in this District. Venue is also proper in this District because a substantial portion of the acts complained of herein were committed by Kappa Mu Mu within this District.

General Allegations

8. CTE is a non-profit corporation established by the Delta Mu Mu Chapter of Omega Psi Phi Fraternity. Since 2009, CTE has provided critical assistance for children and young adults in metro Atlanta, Georgia, offering charitable services and resources in the form of mentoring and scholarship programs.

9. To further its charitable efforts, since 2010 CTE has held an annual fundraising event under the name Sundresses and Seersuckers®. Over the years, CTE’s Sundresses and

¹ For purposes of this Complaint, the term trademark shall encompass trademarks and service marks.

Seersuckers® event has grown from a one-day local event to a nationally recognized multiple-day event with large corporate sponsors.

10. CTE owns U.S. reg. Non. 4117775 for Sundresses and Seersuckers® in Class 41 (the “CTE Mark”) for the following categories:

- (a) entertainment services, namely, organizing live performances by musical artists and groups;
- (b) entertainment services, namely, organizing live charity musical performance concerts;
- (c) entertainment in the nature of a live concert and festival featuring primarily musical performances, dancing and celebrity appearances, as well as the provision of food and merchandise vendors;
- (d) entertainment services, namely providing a venue for live music performances, playing of recorded musical performances, and the educational and entertainment exhibits of vendors;
- (e) ticket information services for entertainment events;
- (f) provision of information relating to live music;
- (g) entertainment services, namely, party planning;
- (h) entertainment services in the nature of an annual party; and
- (i) entertainment services, namely planning and conducting, concerts, shows, and parties.

A true and correct copy of the CTE Mark is attached hereto as Exhibit A.

11. The CTE Mark has been in continuous use in commerce since at least the date of its first use as indicated in its registration to the present day.

12. The CTE Mark is incontestable under Section 15 of the Lanham Act. Accordingly, CTE has the exclusive right to use Sundresses and Seersuckers® for charitable, educational, and entertainment-related services and can prevent other parties from using Sundresses and Seersuckers®, or confusingly similar variations of the mark, including transpositions, in connection with similar services.

13. In May 2023, CTE learned that Kappa Mu Mu planned to host an event on August 19, 2023 under the name “Seersucker and Sundresses with Flaming Cigars.”

14. Specifically, Kappa Mu Mu has advertised and marketed its “Seersucker and Sundresses with Flaming Cigars” event on social media, including Facebook. True and correct copies of Kappa Mu Mu’s social media posts for the August 19, 2023 event are attached hereto as Composite Exhibit B.

15. According to Kappa Mu Mu’s social media posts, the “Seersucker and Sundresses with Flaming Cigars” event is scheduled to take place at Bush Garden Estate, 915 Washington Ave., Greenville, MS 38701.

16. In addition, Kappa Mu Mu posted and maintains an EventBrite page for the August 19, 2023 event using the name “Seersucker and Sundresses with Flaming Cigars.” A true and correct copy of the EventBrite page is attached hereto as Exhibit C.

17. On June 1, 2023, CTE sent Kappa Mu Mu a letter putting it on notice that CTE owns the federal trademark registration for Sundresses and Seersuckers® and that Kappa Mu Mu’s proposed use of the event name “Seersucker and Sundresses with Flaming Cigars” (the “Infringing Name”) was an infringement on CTE’s rights and a violation of the Lanham Act (the “Notice Letter”). A true and correct copy of this correspondence is attached hereto as Exhibit D.

18. Specifically, CTE advised Kappa Mu Mu that “Seersucker and Sundresses with Flaming Cigars” is nearly identical to CTE’s federally registered mark Sundresses and

Seersuckers® and is likely to cause consumers to falsely believe that Kappa Mu Mu's event is licensed by CTE or otherwise has an official connection to CTE. *See* Exh. D. CTE also explained that any such confusion would be detrimental to CTE's fundraising efforts and interfere with exclusive rights enjoyed by CTE's corporate sponsors. *Id.*

19. Accordingly, in its Notice Letter, CTE demanded (i) that Kappa Mu Mu rename its event to a name that does not incorporate Sundresses and Seersuckers®, "Seersucker and Sundresses," or any other confusingly similar variation of Sundresses and Seersuckers®; and (ii) that Kappa Mu Mu update its websites, social media pages, invitations, and other promotional materials to reflect the new non-infringing name. *Id.*

20. CTE sent a copy of its Notice Letter to the individual listed on Omega Psi Phi's website as Kappa Mu Mu's representative, Robert Dogan, and requested a response by June 7, 2023.

21. Kappa Mu Mu did not respond to CTE's Notice Letter by June 7, 2023.

22. Since CTE sent its Notice Letter, Kappa Mu Mu has continued to advertise and market its "Seersucker and Sundresses with Flaming Cigars" event on social media. *See* Comp. Exh. B.

23. On July 10, 2023, counsel for CTE followed up with Kappa Mu Mu regarding CTE's Notice Letter, reiterating that Kappa Mu Mu's use of the Infringing Name infringes on CTE's rights. A true and correct copy of CTE's correspondence is attached hereto as Exhibit E.

24. CTE did not receive any response to its July 10, 2023 follow up correspondence. After July 10, 2023, Kappa Mu Mu did not take down any online references to the Infringing Name and therefore continued to promote, advertise, and market its August 19, 2023 event using the Infringing Name "Seersucker and Sundresses with Flaming Cigars." *See* Comp. Exh. B.

25. Subsequently, on August 11, 2023, counsel for CTE sent an additional follow up correspondence to Kappa Mu Mu, attaching a copy of the preliminary injunction issued by the United States District Court for the Middle District of Louisiana enjoining the use of an event name very similar to Kappa Mu Mu's Infringing Name. A true and correct copy of this correspondence is attached hereto as Exhibit F.

26. On August 16, 2023, CTE learned that Kappa Mu Mu's representative listing on the Omega Psi Phi website had changed from Robert Dogan to Bennie Richard. Accordingly, that same day, counsel for CTE forwarded all previous correspondence directed to Kappa Mu Mu to Bennie Richard. A true and correct copy of this correspondence is attached hereto as Exhibit G.

27. Kappa Mu Mu has not responded to any of CTE's communications.

28. Kappa Mu Mu has not changed the name of its event and continues to advertise and market its August 19, 2023 event using the Infringing Name, which is confusingly similar to the CTE Mark, without CTE's authorization. Moreover, Kappa Mu Mu's use of the Infringing Name is in connection with Kappa Mu Mu's proposed event, which appears to feature a charitable component and various forms of entertainment and thus directly competes with CTE's annual fundraising event, thereby trading on CTE's reputation and goodwill and creating consumer confusion and deception.

29. Kappa Mu Mu, without authorization or license from CTE, has knowingly and willfully used and continue to use the Infringing Name in connection with its event advertisement and marketing.

30. Kappa Mu Mu is imitating the CTE Mark by using the Infringing Name.

31. The community is likely to be confused about whether Kappa Mu Mu's August 19, 2023 event is associated with CTE or CTE's Sundresses and Seersuckers® event.

32. The likelihood of confusion arising from Kappa Mu Mu's use of the Infringing Name is exacerbated by the fact that Kappa Mu Mu and CTE are both affiliated with Omega Psi Phi Fraternity, Inc.

33. The use of the Infringing Name by Kappa Mu Mu in connection with its August 19, 2023 event is likely to cause confusion, or to cause mistake or to deceive, and violates CTE's intellectual property rights. Kappa Mu Mu's use of the Infringing Name creates the false impression that CTE endorses or otherwise approves of Kappa Mu Mu's August 19, 2023 event and/or that CTE is affiliated with Kappa Mu Mu's August 19, 2023 event, when it is not.

34. Kappa Mu Mu's use of the Infringing Name is likely to cause confusion or mistake, or deceive purchasers, potential purchasers, and the relevant consuming public and trade as to the source or sponsorship or approval of Kappa Mu Mu's services and/or products, and/or as to its affiliation with CTE, and is thereby causing harm to CTE's reputation and goodwill.

35. Kappa Mu Mu's use of the Infringing Name in connection with Kappa Mu Mu's services and/or goods is likely to cause initial interest confusion or mistake, or initially deceive purchasers, potential purchasers, and the relevant consuming public and trade as to the source or sponsorship or approval of Kappa Mu Mu's services, and/or as to its with CTE, and is thereby causing harm to CTE's reputation and goodwill.

36. Kappa Mu Mu's unlawful conduct is causing and will continue to cause harm to CTE. In particular, consumers who view Kappa Mu Mu's advertising, marketing, and/or online posts for its August 19, 2023 event will believe that the event is associated with CTE and/or the CTE Mark. This conduct, if not enjoined, will undermine the goodwill that CTE has spent more than a decade carefully cultivating for its Sundresses and Seersuckers® event.

37. Kappa Mu Mu was and is, at all relevant times, aware of CTE's prior use, ownership, and registration of the CTE Mark. In fact, CTE previously contacted Kappa Mu Mu to

remove the infringement and resolve the issue amicably, but Kappa Mu Mu has refused to comply with CTE's demands to cease and desist the use of the Infringing Name.

38. Kappa Mu Mu's continued use of the Infringing Name left CTE no choice but to initiate this action to protect CTE's intellectual property rights. CTE engaged the undersigned counsel to represent it in this action and is obligated to pay its counsel a reasonable fee. All conditions precedent to this action have been met or waived.

Count One

(Trademark Infringement – 15 U.S.C. § 1114)

39. CTE realleges and incorporates herein the allegations contained in Paragraphs 1 through 38 above.

40. This claim is for trademark infringement under the laws of the United States, Section 32 of the Lanham Act, 15 U.S.C. § 1114(1)(a).

41. Kappa Mu Mu used the Infringing Name to advertise and sell Kappa Mu Mu's "Seersucker and Sundresses with Flaming Cigars" event in violation of CTE's rights in its registered trademarks and service marks.

42. Kappa Mu Mu's use of the Infringing Name is likely to cause confusion, mistake, and to deceive consumers.

43. Kappa Mu Mu's actions constitute a blatant attempt to confuse the consuming public and to trade off CTE's goodwill.

44. Kappa Mu Mu acted knowingly and willfully, with full knowledge of the likelihood of confusion and with the intent to deceive consumers in order to trade off the efforts and earned goodwill and reputation of CTE.

45. By reason of the foregoing acts of trademark infringement, CTE has been injured in an amount not yet ascertained. Further, Kappa Mu Mu has been unjustly enriched by virtue of its deception of consumers and misappropriation of CTE's goodwill.

46. In addition, as a result of Kappa Mu Mu's acts of infringement, CTE suffered and will continue to suffer irreparable harm for which CTE has no adequate remedy at law, including damage to CTE's goodwill. Unless this Court enjoins Kappa Mu Mu's acts of infringement, CTE will continue to suffer irreparable harm.

47. Kappa Mu Mu's actions have been knowing, intentional, wanton, and willful. The principles of equity warrant an award to CTE of treble damages and profits, attorneys' fees, and the costs of this action pursuant to 15 U.S.C. § 1117.

Count Two

(False Designation of Origin – 15 U.S.C. § 1125(a))

48. CTE realleges and incorporates herein the allegations contained in Paragraphs 1 through 38 above.

49. Kappa Mu Mu's use of the Infringing Name in interstate commerce, without CTE's consent, is a false designation of origin causing a likelihood of confusion, mistake, and deception as to source, sponsorship, affiliation, and/or connection in the minds of the public. Kappa Mu Mu's conduct has infringed CTE's trademark rights in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1).

50. By reason of the foregoing, CTE has been injured in an amount not yet fully determined. Further, Kappa Mu Mu has been unjustly enriched by virtue of its deception of consumers and misappropriation of CTE's goodwill.

51. In addition, as a result of Kappa Mu Mu's acts of infringement, CTE suffered and will continue to suffer irreparable harm for which CTE has no adequate remedy at law, including

damage to CTE's goodwill. Unless this Court enjoins Kappa Mu Mu's acts of infringement, CTE will continue to suffer irreparable harm.

52. Kappa Mu Mu's actions have been knowing, intentional, wanton, and willful. The principles of equity warrant an award to CTE of treble damages and profits, attorneys' fees, and the costs of this action pursuant to 15 U.S.C. § 1117.

WHEREFORE, CTE demands judgment as follows:

- a. Judgment in CTE's favor on all claims herein;
- b. Preliminary and permanent injunctions preventing Kappa Mu Mu and those additional parties specified in Federal Rule of Civil Procedure 65(d) from continued infringement of CTE's intellectual property rights, including infringement of CTE's registered trademarks and service marks;
- c. An accounting of profits and damages resulting from Kappa Mu Mu's false designation of origin and trademark infringement, and trebling of such damages under the trademark laws because of the knowing, intentional, willful, and wanton nature of Kappa Mu Mu's conduct;
- d. An award to CTE of (i) an amount equal to the actual damages suffered by CTE as a result of the infringement of its proprietary trade dress; (ii) an amount equal to the profits earned by Kappa Mu Mu as a result of its infringement; (iii) an amount equal to three times the monetary award assessed in view of Kappa Mu Mu's willful and wanton infringement; (iv) in the alternative as may be elected by CTE, pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117(c), statutory damages for each of Kappa Mu Mu's willful acts of infringement; (v) pre-judgment interest and post-judgment interest; (vi) an amount equal to CTE's reasonable attorneys' fees, under 15 U.S.C. § 1117; and

e. Such other and further relief as the Court deems proper.

REQUEST FOR JURY TRIAL

Pursuant to Rule 38, Federal Rules of Civil Procedure, CTE hereby demands a jury trial on all issues triable as of right to a jury.

This 17th day of August, 2023.

Respectfully submitted,

COMMITMENT TO EXCELLENCE, INC.

By Its Attorneys,

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CALDWELL & BERKOWITZ, PC

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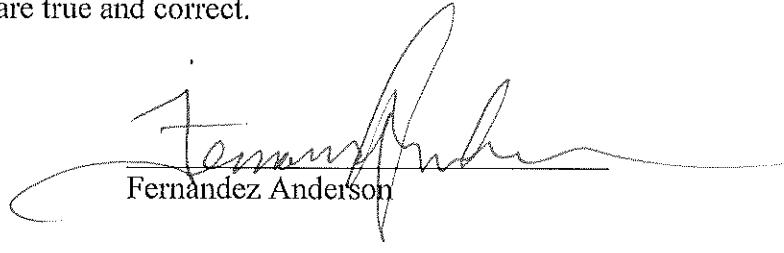
KAPPA MU MU CHAPTER OF OMEGA PSI
PHI FRATERNITY, INC.

DEFENDANT

VERIFICATION

Fernandez Anderson, having first been duly sworn, hereby deposes and says that the factual allegations contained in the foregoing Complaint are true and correct.

This 17 day of August, 2023.



Fernandez Anderson

Sworn to and subscribed before me
this 17 day of August, 2023.

Brenda S. Miller
Notary Public

My Commission Expires: 2/29/2024

